

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) ATTY'S DKT: CLASSEN=6A
)
John Barthelow CLASSEN)
)
Appln. No.: 10/081,705)
)
Filed: February 21, 2002) Washington, D.C.
)
For: COMPUTER ALGORITHMS AND)
 METHODS OF PRODUCT SAFETY)

DECLARATION OF JOHN BARTHELOW CLASSEN

I, John Barthelow Classen, declare as follows:

1. I am the inventor of the subject matter of the above-identified patent application.
2. I was working with Evelyn McConathy, a patent attorney at the firm of Montgomery, McCracken, Walker & Rhoads, LLP, very closely to prosecute this application.
3. She reported the filing of the Reply Brief and Request for Oral Hearing in a letter dated August 15, 2008, a copy of which is submitted herewith as Exhibit Q.
4. During the period from August 15, 2008, until July 19, 2010, with the exception of between March 2009 and November 2009, I was working with Ms. McConathy to draft amended claims to submit in an RCE. It was our intention that the RCE would be filed once we received notice from the Board of Patent Appeals and Interferences of the scheduling of the oral hearing that we had requested.
5. In March 2009, I instructed Ms. McConathy to stop work on the RCE so that I could consider whether to proceed with the Appeal. Exhibit M. In November 2009, a co-pending application was allowed, which again raised in my mind the possibility of drafting

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amended claims in this case that could be successful before the Examiner, so I suggested we get back to work on the claims. Exhibit N.

6. On July 19, 2010, because of a large outstanding balance that I owed the firm, and that they had been requesting payment for, I instructed Ms. McConathy to discontinue working on the RCE. See Email dated July 19, 2010, submitted herewith as Exhibit O.

7. On September 30, 2008, Ms. McConathy said that “we can stay with the Appeal as filed, but the odds are quite high that the Declarations and supporting evidence will not be considered on Appeal....” Exhibit E. This confirmed my belief that the Reply Brief and attached Declarations reported to me as having been filed in August 2008, were part of the PTO record.

8. At no time between August 2008, and July 19, 2010, did Ms. McConathy or anyone else inform me that the PTO had not received the Reply Brief, Request for Oral Hearing, and the Declarations submitted with those papers. In fact, during that time, I repeatedly asked Ms. McConathy for status updates, and was told that she was working, but that there was no rush. See Exhibits F-J and O. The redactions in these exhibits relate to attorney-client privileged information unrelated to the points I am making here.

9. It was not until after the Board of Appeals and Patent Interferences had issued its decision and I expressed my surprise, and asked her what happened, that she told me of the non-receipt of the papers. Exhibits K-L.

10. Had she informed me that the PTO had not received the Reply Brief, the Request for Oral Hearing, and the accompanying Declarations and Exhibits, and that because of that, we were going to get a decision at the Board without consideration of those papers, and that there was a way to refile the papers before filing the RCE, I would have instructed her 1) to do what it took to refile the papers; or 2) to file the RCE immediately, and, if

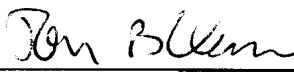
necessary, file the amended claims at a later time. I would not have told her to stop work under those circumstances, because the costs of filing the RCE were minimal, and I would not have wanted to risk getting a decision without the Board being in possession of all of the evidence we had.

11. As it was, I felt comfortable in ordering temporary halts in the work on the RCE claims from time to time, because of billing and payment issues, because I was of the impression that the decision would not issue before the oral hearing took place.

12. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated: 10/25/2010


John Barthelow Classen